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OFFICE OF PETITIONS

In re Application of :
Schulze, et al. :
Application No. 10/593,119 : ON APPLICATION FOR
Filed: September 18, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. 7601/88256 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT CALCULATION, filed October 28, 2009. The application will be treated under 37 C.F.R. 1.705(b). Applicants request that the initial determination of patent term adjustment be corrected from four hundred and five (405) days to four hundred and nine (409) days.

The application for patent term adjustment is DISMISSED.

On September 30, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 405 days. The instant application for patent term adjustment was timely filed¹.

Applicants dispute the period of adjustment of 434 days for Office delay in mailing at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371 in an international application. Applicants contend the period of reduction should be 438 days. Applicants assert that all requirements of 35 U.S.C. 371(c) were met on September 18, 2006. Therefore, applicants argue that September 18, 2006 should be the date from which the 14 month period is calculated.

¹ PALM records indicate that the Issue Fee was received on December 27, 2009.

The Office calculated the 14 month period from September 22, 2006, which is the completion date.

Applicants are informed that the date of completion of all 35 U.S.C. 371 requirements is relevant for purposes of patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)(II) and 37 CFR 1.702(a)(1) when the Office has failed to mail a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than 14 months after the date on which the requirements under 35 U.S.C. 371 were fulfilled. This date is the latest of:

- (A) the date of submission of the basic national fee;
- (B) the date of submission or communication of the copy of the international application;
- (C) the date of submission of the translation of the international application if the international application is not in the English language;
- (D) the date of submission of an oath or declaration of the inventor in compliance with 35 U.S.C. 371(c)4)
- (E) the earlier of 30 months from the priority date or the date of request for early processing under 35 U.S.C. 371(f) if requested prior to 30 months from the priority date;
- (F) if a request for early processing has not been requested prior to 30 months from the priority date, the date of submission of any translation of the annexes to the international preliminary examination report if the translation of the annexes are filed within the time period set in a Notification of Missing Requirements requiring either an English translation of the international application or an oath or declaration; and
- (G) the date of submission of any surcharge for submitting the oath or declaration later than 30 months form the priority date.

As early processing was not requested in this application, the date of completion is 30 months from the priority date. See (E) above. The priority date was June 9, 2005. The date of completion is September 22, 2006. In short, the fourteen month completion date cannot be before the commencement date.

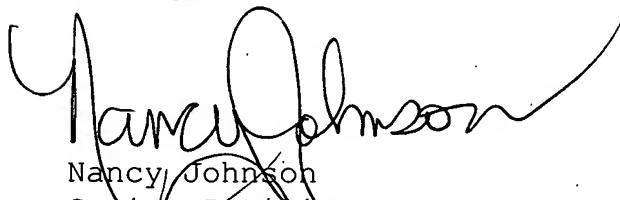
Entry of the period of reduction of 434 days (from November 23, 2007, which is the date after 14 months after the date of completion, to January 29, 2009, the date a restriction requirement was mailed) is warranted.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 405 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.



Nancy Johnson
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Office of Petitions